2009 U.S. Annual Report to the Kimberley Process

This annual report is submitted to the Working Group on Monitoring on behalf of the United States. The report was prepared by the Department of State, in conjunction with representatives from other U.S. government agencies. Multi-stakeholder consultation concerning the report was held on March 26, 2010, and representatives from both U.S. industry and civil society were provided an opportunity to review and comment on this report.

A. Institutional Framework

In 2003, the Clean Diamond Trade Act of 2003 (Public Law 108-19) established a Kimberley Process Implementation Coordinating Committee to coordinate implementation of the Act. This U.S. government interagency committee includes officials from the Departments of State, Treasury, Commerce, Homeland Security, and the Office of the United States Trade Representative. Provisions of the Clean Diamond Trade Act are carried out by several U.S. government agencies and the private United States Kimberley Process Authority (USKPA). U.S. agencies involved in implementation of the Clean Diamond Trade Act include:

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Exporting Authority

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Importing Authority

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United States Kimberley Process Authority

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B. Legal Framework

The Clean Diamond Trade Act (Pub. L. 108-19) provides the legal framework pursuant to which the United States implements the Kimberley Process Certification Scheme (KPCS)(www.state.gov/e/eeb/diamonds). The Clean Diamond Trade Act was further implemented by Executive Order 13312 (July 29, 2003). Pursuant to this Executive Order, the Department of the Treasury issued the Rough Diamonds Control Regulations, the original complete version of which was published in the Federal Register on September 23, 2004; the latest amendments to the Regulations were published on May 21, 2008. The complete version of the Regulations can be accessed at:

http://www.access.gpo.gov/nara/cfr/waisidx_09/31cfr592_09.html. Updated lists of Kimberley Process Participants are published periodically in the Federal Register. The most recent list was published on December 31, 2008; it can be accessed at: http://www.state.gov/e/eeb/diamonds/99688.

C. Export and Import Regimes/Compliance Improvement Efforts

1. Outgoing Shipments

The U.S. system provides that the Exporting Authority, i.e. the U.S. Census Bureau, working together with the U.S. Kimberley Process Authority (USKPA), issues Kimberley Process certificates for rough diamond exports. The USKPA currently has licensing agreements with 19 entities as of the end of 2009. USKPA licensees issued 1,276 certificates in 2009. The USKPA performs an annual, on-site performance review of selected licensees; four licensees (two industrial diamond companies, one Internet seller, and one common carrier) were visited and reviewed during 2009. The USKPA's annual review of selected licensees is included as an annex to the annual review of the practices and procedures of the USKPA, which is sent to the U.S. Congress in July of each year.

During 2009, the Department of State initiated quarterly teleconferences (held in September and December 2009) with the USKPA and its licensees to provide an opportunity for U.S. government agencies to communicate concerns or guidance directly to exporters, as well as to respond to questions and requests for information posed by the exporting community. These have been viewed as a positive step and have enabled closer coordination with and oversight of the private sector.

The USKPA began developing a web-based system to collect and coordinate information related to the issuance of KPCs, which will both ease the process for licensees in issuing KPCs and enhance the potential for oversight of these shipments by government agencies, giving agencies real-time access to the database and providing for e-mail alerts to agencies when a KPC is issued. The system is expected to launch in May 2010.

To complement existing activities, the Department of Homeland Security, through the U.S. Customs and Border Protection (CBP), continues to conduct examinations of targeted rough diamond export shipments. In 2009, CBP conducted 89 inspections of outbound shipments.

All other information provided in the 2005 annual report remains valid.

2. <u>Incoming Shipments</u>

¹ During 2009, one company surrendered its license, but three new companies joined, bringing the total to 19, from the 17 reported in 2008. The total number of KPCs issued from the United States includes the company no longer licensed to do so.

The CBP is the Importing Authority responsible for implementing, enforcing, and monitoring provisions of the Clean Diamond Trade Act.

Recognizing the need to develop more uniform enforcement practices, CBP issued a policy memorandum to its field personnel in February 2008 emphasizing the requirement for officers to monitor the provisions of the CDTA as it related to the presentation of the KP certificate upon importation and the requirement that rough diamond shipments be secured in tamper-resistant packaging. CBP defines tamper-resistant packaging as "packaging having an indicator or barrier to entry that could reasonably be expected to provide visible evidence that tampering had occurred. Standard mailing and express consignment packaging alone is not considered tamper resistant." A version of this definition was also included in a General Warning to the public issued by the Department of State in December 2009.

CBP, in conjunction with the Department of State, continued to take steps in 2009 to work with express couriers to improve compliance with the Kimberley Process, to include ensuring correct classification of merchandise.

The Department of State, in cooperation with Belgian Customs officials, contacted a company engaged in exporting rough diamonds to the United States via Internet sales to include information advising U.S. importers of their U.S. compliance obligations. The United States is grateful to our Belgian colleagues for this assistance.

In an effort to promote greater understanding of the Kimberley Process and Clean Diamond Trade Act – and in turn, more effective enforcement -- the Department of State, CBP, and Census visited critical CBP ports of entry on three occasions. During these visits, enforcement procedures and standards undertaken at the port were reviewed, and physical inspections of incoming shipments were conducted. This coordinated approach connecting those involved in Kimberley Process/Clean Diamond Trade Act policy-making in Washington with the officers involved in implementing policy at the port level is an important step, and the United States intends to continue with this approach. In addition, CBP issued internal memoranda providing guidance on enforcement issues including mitigation guidelines and procedures for entry of rough diamonds. Training on rough diamonds and the KP, to be conducted in coordination with the Belgian authorities, is planned for officers from CBP and other U.S. enforcement agencies for July 2010.

Finally, in 2009, CBP conducted review of documentation for all inbound shipments and 172 physical inspections of inbound shipments.

D. System of Internal Controls and Industry Self-regulation.

In order to strengthen the credibility of the Kimberley Process, the U.S. diamond industry has implemented a system of warranties for rough and polished diamonds and jewelry containing diamonds. Under this system, all buyers and sellers of rough and polished diamonds make the following statement on their invoices:

"The diamonds herein invoiced have been purchased from legitimate sources not involved in funding conflict and in compliance with United Nations resolutions. The seller hereby guarantees that these diamonds are conflict free, based on personal knowledge and/or written guarantees provided by the supplier of these diamonds."

Several major U.S.-based jewelry retailers, including Tiffany, Helzberg, and Kay Jewelers, publish policies on conflict diamonds on their websites. Jewelry trade associations such as the Jewelers of America and International Council on Responsible Jewelry Practices have developed codes of conduct that list member obligations regarding compliance with the Kimberley Process. In 2009, the Responsible Jewelry Council launched a new certification system, which also includes Kimberley Process compliance as an element.

Finally, in addition to the formal visits conducted in conjunction with the USKPA, officials from the State Department, CBP, and Census informally visited approximately 15 diamond companies throughout 2010 to discuss the KP, the companies' internal compliance efforts, and other related issues.

E. Statistics

On January 1, 2009, the United States, through Kelly Phou of the Census Bureau, assumed the Chair of the Kimberley Process's Statistics Working Group. In this capacity, the United States provides direct leadership to the Working Group's efforts to improve the submission and analysis of statistical data. Census completed the construction of a new, fully portable website to host KP statistical data, which was introduced at the 2009 Plenary. Census has also worked to develop other functionalities necessary to the Working Group's activities. The United States greatly appreciates the

cooperation and assistance of the previous Working Group Chair, Canada, during the transition phase.

In addition to its role as Working Group Chair, the Census Bureau also collects and provides U.S. rough diamond trade statistics to the Kimberley Process website. U.S. Geological Survey (USGS) experts have also conducted reviews of other Kimberley Process Participants' statistical submissions.

The Census Bureau has issued a "Notice of Request for Faxed Submission of Kimberley Process Certificates" requiring copies of all Kimberley Process Certificates to be faxed to a toll-free number (1-800-457-7328). The Census Bureau has continued to reach out to U.S. importers and exporters not providing faxed copies of KPCs to remind them of this requirement as a means to verify statistics provided to Census (imports) and the USKPA (exports). All other statistical information in the 2006 report remains valid. The Census Bureau will continue to update prior years' statistics as more information is received.

The Census Bureau conducted bilateral reconciliation of trade statistics in 2009 with Australia, Brazil, Canada, European Union, India, Japan, Israel, Namibia, Russia, Sierra Leone, Singapore, South Africa, and Switzerland, Thailand, and United Arab Emirates. The Census Bureau continues to reconcile U.S. statistics with our trading partners for 2009, but this process has not been completed. As a result, any necessary changes will be incorporated at a later date.

As in previous years, during the reconciliation process, the Census Bureau uncovered several data discrepancies and contacted U.S. importers to verify information and to obtain KP certificates. When discrepancies are identified, firms are contacted and efforts made to educate them on the legal obligations applicable to imports and exports of rough diamonds.

In 2009, the majority of identified instances in which KP certificates were not faxed to the Census Bureau involved low carat weight and/or low value shipments likely purchased through websites by one-time importers not generally accustomed to trading in rough diamonds. These one-time importers are generally not aware of their legal obligations; in such cases, the importers receive direct communication informing them of the applicable requirements, including by telephone call and/or letters.

The United States is not a rough diamond producer. U.S. exports are reexports of rough diamonds imported from other Kimberley Process Participants. The United States has submitted trade data for 2009 and KP export certificate counts by Participant for 2009. The United States also provided certificate counts for imports by Participant, and quarterly import certificate counts.

According to published Census Bureau statistics, rough diamond re-exports from the United States in 2009 totaled \$ 265.68 million – a 39 percent decrease from the revised 2008 level of \$440.80 million. U.S. re-exports are primarily to three KP Participants: Israel (\$69.82 million), EU (\$46.12 million) and the UAE (\$37.26 million), which were the destination of 57 percent of U.S. re-exports of rough diamonds in 2009.

Statistics provided by the USKPA indicate that 1,276 Kimberley Process Certificates were issued during 2009. These certificates covered exports to 24 participants detailed in the table below.

USKPA Certificates Issued in 2009	
Country Name	Number of KP Certificates
Armenia	1
Australia	35
Brazil	16
Canada	164
China, People's Republic of	70
Chinese Taipei	5
Czech Republic	1
European Union	459
India	95
Indonesia	1
Israel	109
Japan	124
Korea, Republic of	108
Mauritius	2
Mexico	29
Namibia	7
New Zealand	1
Norway	2

Singapore	2
South Africa	12
Switzerland	8
Thailand	12
Ukraine	1
United Arab Emirates	12
Total KP Certificates	1,276

U.S. Imports of Rough Diamonds in 2009

The United States imported \$328.1 million in rough diamonds in 2009, a decrease of 56 percent from revised 2008 level of \$748.7 million. The United States imports most of its rough diamonds from only a few Participants. The top three Participants in 2009 were the EU (\$154.6 million), Israel (\$49.5 million), and Switzerland (\$30.2 million). The top three providers of rough diamonds (EU, Israel, and Switzerland) furnished 71 percent of U.S. rough diamond imports in 2009.

According to the Census Bureau, the United States imported rough diamonds from 25 KP Participants in 2009, including: Angola, Armenia, Australia, Botswana, Brazil, Canada, , Democratic Republic of Congo, European Union, Ghana, Guinea, Guyana, India, Israel, Japan, Mexico, Namibia, the People's Republic of China, the Republic of Korea, Sierra Leone, South Africa, Switzerland, Tanzania, Thailand, the United Arab Emirates and Vietnam.

The United States has provided reports on these 2009 imports, including the value and carat weight and the country of provenance and country of origin, to the Kimberley Process website, in accordance with Annex III of the KPCS.

F. Implementation of Specific Recommendations

Since the 2005 Review Visit, the United States has worked to improve its system of internal controls, in a range of areas. Of note in this regard in 2009 was continued implementation and enforcement of a 2008 regulation that requires the submission of annual reports by any U.S. person importing or exporting rough diamonds. The report must include annual totals of imports, exports, and remaining stockpiles at the end of the year. The

second round of reports, covering calendar year 2008, was due in April 2009, and over 100 were received. Reports covering calendar year 2009 are due on 1 April, 2010; a reminder concerning these reports was issued in March 2010 and published on the websites of the Departments of State and Treasury. These reports provide an additional mechanism for analyzing trade statistics, as well as further information on all individuals and entities trading in rough diamonds in the United States.

To enforce this requirement, the Department of the Treasury's Office of Foreign Assets Control issued over 100 administrative subpoenas to importers/exporters who had not complied with this requirement. Most importers/exporters receiving this administrative subpoena then complied with the reporting requirement, as they were predominantly individuals or companies that had imported a small quantity of rough diamonds and were not aware of the general requirements. For those who have not yet complied, further enforcement action related to these annual reports is contemplated.

G. Infringements

CBP seized 18 shipments in violation of the CDTA in 2009. The seized shipments are valued at \$1.15 million. While the majority of seizures were related to technical violations of the Clean Diamond Trade Act, such as inadequate packaging or failure to include a valid KPC, in three cases, the rough diamonds were seized for lack of declaration and misclassification. None of these cases have been determined to involve imports of possible conflict diamonds. Of these seizures, three cases were administratively forfeited, and two were remitted in full as a result the applicable administrative petition processes. Of the 2009 cases, nine cases remain open at various stages of the petition process. One 2008 seizure case that had been on appeal by the importer in the U.S. Court of Appeals for the Second Circuit was closed during 2009, and the rough diamonds were forfeited.

The Department of State began a process of issuing public enforcement/infringement "Warnings" via its website. The first warning, issued in May 2009, concerned the need for additional diligence on Guinean imports, in light of the receipt of counterfeit certificates an importer received from potential business partners in Guinea (the counterfeit KPCs were provided in advance of potential shipment, so no rough diamonds were seized). The United States cooperated with Guinean authorities on these fake certificates but is not aware of further enforcement action taken in Guinea.

The United States also identified counterfeit certificates from Sierra Leone and Ghana, also in the pre-clearance phase. Pursuant to the Administrative Decision on Cooperation and Enforcement, the United States reported on two of these counterfeit certificates to the WGM and shared information directly with enforcement officials in Ghana and Sierra Leone. The United States is not aware of further enforcement action taken in either country.

In April 2009, CBP issued guidelines for the remission of forfeitures and the mitigation of penalties for violation of the Clean Diamond Trade Act. These mitigation guidelines provide a general framework and guidance regarding CBP's disposition of forfeitures and penalties under the Clean Diamond Trade Act and implementing regulations. Issuance of the guidelines has greatly assisted CBP personnel in the uniform and consistent processing, review, and disposition of CDTA violations, and has provided further clarity to the trade community as to how forfeitures and penalties will generally be handled. The Guidelines are available on-line at:

http://www.cbp.gov/linkhandler/cgov/trade/legal/bulletins_decisions/bulletins_2009/vol43_04102009_no15/43genno15.ctt/43genno15.pdf.

In 2009, the Department of State coordinated a process with CBP and the Smithsonian Institution to transport all forfeited diamonds to the Smithsonian for storage and, consistent with applicable law, possible research determined to be in U.S. government interests.

Finally, in advance of the Administrative Decision on Cooperation and Enforcement, the United States developed a template for the sharing of information concerning seizures/forfeitures requested by other KP Participants. The template was circulated through the WGDE and is available on-line at:

http://www.cbp.gov/linkhandler/cgov/trade/trade_programs/diamonds/not_kim.ctt/not_kim.pdf

H. Technical Assistance

The United States has served as the coordinator for technical assistance for the Kimberley Process since November 2005. The United States has spent more than \$19 million in the last eight years on technical assistance and capacity building in the diamond sector in Africa. A full report on various international technical assistance activities in the diamond sector was presented to the Kimberley Process plenary in November 2009. In 2009, the

U.S. State Department, the U.S. Agency for International Development (USAID), and the USGS cooperated to provide technical assistance to Liberia, Ghana, Mali, and the Central African Republic, as well as with a \$50,000 contribution to the Kimberley Process Civil Society Fund.

USAID/Land Tenure

The United States continues to support a land tenure project in the Central African Republic (CAR), which aims to strengthen property rights in order to clarify diamond origin, reinforce internal controls and bring more alluvial diamonds into formal export channels. USAID projects are also designed to help diamond-producing communities benefit from the fair production and marketing of diamonds. The project will assist diamond producers and communities to validate mining claims and comply with government requirements for registration and documentation of production/sales. These projects will develop maps and database tools to build and maintain a claims registry, and to provide Geographic Information Systems training. More information is available at:

http://www.ardinc.com/projects/detail_region.php?id=155

In the CAR, approximately 428 mining claims of more than 253 men and women artisanal miners in the pilot project zone have been validated by local authorities and documented for the first time in a publicly-accessible registry. Extensive training and awareness-raising on the mining code has increased compliance with government requirements for registration and documentation of production and sales, and reduced miners' vulnerability to harassment. The ability of miners and mining communities to retain more of the benefits from diamond production has been enhanced through capacity building in diamond valuation and small business management. Through assistance in land use planning, the pilot project is helping diamondproducing communities to manage, in a more deliberate fashion, the expansion of diamond-mining and its encroachment on other high-value production systems. The government of the CAR has requested expansion of the project, and USAID and its partners are currently in the initial stages of implementing the same approach in two additional mining districts in the southwest of the country. A documentary film concerning this project was screened for the Kimberley Process Plenary in Namibia in November 2009.

A related program that began operation in Guinea in 2008 has been suspended. USAID is considering expansion of the property rights program to an additional KP Participant in West Africa.

USGS

Since 2006 the US Geological Survey (USGS) has been supporting KP implementation, with financial support from the US Department of State. This support can be divided into (1) statistical support for the KP effort and (2) technical assistance to the countries of Liberia, the Central African Republic (CAR), Mali, and Ghana.

General Statistical Support for the KP effort:

Training was provided to the CAR, Mali, and Ghana on how to meet the statistical reporting requirements of the KP and methods for collecting and reporting the required statistics. Furthermore, the USGS has sent technical experts on review missions to Liberia, Sierra Leone, and Angola, to identify possible issues associated with KP statistics reporting.

Technical Assistance in Support of Liberia, the CAR, Mali, and Ghana:

The USGS has also focused efforts on conducting diamond resource and production capacity assessments in Liberia (2006-2009), the Central African Republic (2007-2008), Mali (2007-2008), and Ghana (2008-2010). Through the extensive research of available literature, the creation of a geographic information system (GIS) with diamond mining information and locations, satellite image analysis, geological assessments, and field work, these studies produce estimates of a country's possible diamond production capacity. These estimates can then be compared with the production statistics released by the country, acting as an important method of verification.

Liberia: The USGS project in Liberia concluded in 2007. However, in 2009, the USGS received a request for assistance from the Ministry of Lands Mines and Energy to repair their diamond tracking database. In response, the USGS developed a new diamond tracking database using FileMaker Pro, a much more user friendly software than that used on the original diamond tracking database. Later a two-person USGS team then went to Liberia and spent 4 days installing the new system and providing training. That system

is now operational. To date, the USGS continues to support the new database with upgrades and technical support.

Central African Republic

The final report for this work received USGS Director's approval for final publication and release on January 8, 2010.

Chirico, P.G., Barthélémy, Francis, and Ngbokoto, F.A., 2010, Alluvial diamond resource potential and production capacity assessment of the Central African Republic: U.S. Geological Survey Scientific Investigations Report 2010-1003, 22 p.

Mali

The final report for this work received USGS Director's approval for final publication and release on January 7, 2010.

Chirico, P.G., Barthélémy, Francis, and Koné, Fatiaga, 2010, Alluvial diamond resource potential and production capacity assessment of Mali: U.S. Geological Survey Scientific Investigations Report 2010-1004.

Ghana

In March 2009, the USGS conducted a two-week field campaign investigating alluvial diamond mining activities in the Birim Valley and regions near Tarkwa. At each site data was collected on diamond grades, production levels, local geology and geomorphology, and mining techniques.

During the early part of 2009, the USGS developed a diamond tracking database for Ghana which was intended to track diamonds from their source, through transactions which moved the diamonds to the Precious Minerals Marketing Company (PMMC) and to final export from Ghana with a KP certificate. In March 2009, a three person team visited Ghana to install that database. After testing and modifications, the database was successfully installed within the Mineralc Comission. However, networking difficulties precluded finalizing the connection with the PMC. The USGS is continuing work with the Minerals Commission and the PMMC to finalize implementation of the database.

In September 2009, the USGS released a draft report which evaluated Ghana's rough diamond production capacity. This report is currently awaiting USGS Director's approval for publication and release.

Chirico, P.G., Malpeli, K.C., Anum, Solomun, and Phillips, E.C., 2010, Alluvial diamond resource potential and production capacity assessment of Ghana: U.S. Geological Survey Scientific Investigations Report 2010-xxxx, xx p.

In January 2010, the USGS provided a four-day remote sensing training course to 22 members of the Geological Survey Department of Ghana. The training covered topics in GIS and satellite imagery tools that can facilitate the monitoring of alluvial diamond production.

I. Miscellaneous

Review Visits

The United States chaired one KP Review Visit (European Union), participated in three additional review visits (Liberia, Sierra Leone, and Angola) and one review mission (Zimbabwe) during 2009.